

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

HEATHER R. BRILLO,

Plaintiff,

vs.

Case No. 20-cv-164-RAW

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

COMES NOW the Plaintiff, Heather Brillo, by and through undersigned counsel, and for her cause of action against the Defendant United States of America, alleges and states as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Heather Brillo is a resident of Pittsburg County, Oklahoma.
2. Plaintiff brings this action pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671, *et seq.*, and 28 U.S.C. 2401(b). The Federal Tort Claims Act is the exclusive remedy for injuries caused by medical providers who are employed by the Department of Health and Human Services and/or the Indian Health Service.
3. The acts and omissions giving rise to this action occurred at the Choctaw Nation Healthcare Center in Talihina, Oklahoma and the Choctaw Nation of Oklahoma Health Services McAlester Clinic.
4. Defendant's acts and omissions resulted in the amputation of Plaintiff Heather Brillo's right leg below the knee on July 20, 2017; therefore, jurisdiction and venue are proper herein.

5. Pursuant to the Federal Tort Claims Act, Plaintiff served an administrative notice of claim for damages, injury or death upon the United States via the Office of the General Counsel General Law Division on May 20, 2019.

6. The United States Department of Health and Human Services denied Plaintiff's claim on December 5, 2019.

7. Plaintiff exhausted her administrative remedies, and this action is timely filed within six months of the date that the Office of the General Counsel General Law Division denied Plaintiff's claim.

THE CLAIMS

8. Plaintiff Heather Brillo's right leg was amputated below the right knee after receiving negligent medical care by individuals employed by the Indian Health Service at the Choctaw Nation of Oklahoma Health Services McAlester Clinic and the Choctaw Nation Healthcare Center in Talihina, Oklahoma.

9. The Defendant, United States of America, through the Choctaw Nation of Oklahoma Health Services McAlester Clinic and the Choctaw Nation Healthcare Center in Talihina, Oklahoma and their agents and employees, owed the Plaintiff a duty to provide reasonable care.

10. Employees of the Choctaw Nation Health Services McAlester Clinic and the Choctaw Nation Healthcare Center breached the standard of care when they misdiagnosed Ms. Brillo as having capsulitis, which is inflamed ligaments in the feet and toes.

11. Employees of the Choctaw Nation Health Services McAlester Clinic and the Choctaw Nation Healthcare Center breached the standard of care when they misdiagnosed Ms. Brillo as having Raynaud's syndrome, which causes narrowing of blood vessels.

12. Ms. Brillo was actually suffering from blood clots. Employees of the Indian Health Service at the Choctaw Nation of Oklahoma Health Services McAlester Clinic and the Choctaw Nation Healthcare Center in Talihina, Oklahoma negligently failed to diagnose Plaintiff's blood clots, thereby delaying prompt treatment that would have prevented Ms. Brillo's worsening condition and amputation.

13. Employees of the Choctaw Nation Health Services McAlester Clinic and the Choctaw Nation Healthcare Center breached the standard of care by placing a boot over Plaintiff's right foot while blood clots were present thereby exacerbating her condition.

14. Employees of the Choctaw Nation Health Services McAlester Clinic and the Choctaw Nation Healthcare Center directly and proximately caused Ms. Brillo's amputation by breaching the standard of care in negligently failing to diagnose Ms. Brillo's blood clots, misdiagnosing her with capsulitis and Raynaud's syndrome, and by placing a boot over Plaintiff's right foot while blood clots were present.

15. Ms. Brillo's amputation was totally preventable with adherence to a reasonable standard of care and a reasonable response to clinical information that was or should have been available to these medical providers.

16. As a result of each Defendant's negligence, Ms. Brillo: suffered bodily injuries; suffers increased probability of future sequelae and/or complications due to her injuries; was prevented from transacting her business; lost income; suffered impairment to earning capacity; suffered physical impairments; suffered and will suffer pain of mind and body; has incurred and will incur medical expenses; has been adjudicated disabled; and has been disfigured, all for which damages are claimed herein.

WHEREFORE, Plaintiff prays for judgment against the Defendant for actual and compensatory damages in an amount in excess of \$75,000, but no more than the amount requested in Plaintiff's administrative tort claim, together with costs of this action and for any further relief this Court deems just and proper.

Respectfully Submitted,

Heather Brillo,

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